

1 70. JH Kelly performed all obligations under the Subcontract and duly completed its
2 obligations under the Subcontract, except for those excused by the AECOM Defendants' failures
3 to perform. As of the date of completion, the amount remaining as unpaid contract funds was the
4 sum of \$16,402,479.89, or an amount to be proven at the time of trial. That amount has exceeded
5 seven days overdue. No good-faith dispute existed or now exists about the unpaid contract funds.

6 71. The AECOM Defendants wrongfully withheld payments due and owing to JH
7 Kelly. No good-faith dispute exists or has existed regarding the payments that have been
8 withheld.

9 72. The conduct of the AECOM Defendants as alleged in this Complaint violates
10 Business and Professions Code section 7108.5, and/or other applicable code section(s).

11 73. Pursuant to those code sections, JH Kelly is entitled to its attorneys' fees (among
12 other statutory bases) should the Court find in its favor.

74. In addition, JH Kelly is entitled to penalties at a rate of 2% per month.

14 Wherefore, JH Kelly seeks relief as set forth in the Prayer for Relief.

SEVENTH CAUSE OF ACTION

(Quantum Meruit/Reasonable Value)

17 75. JH Kelly realleges and incorporates by this reference, as if set forth in full herein,
18 the allegations in paragraphs 1 through 74 above.

19 76. JH Kelly furnished labor, services, and materials to the AECOM Defendants at
20 their special insistence and request in connection with the Project, for which the AECOM
21 Defendants then and there agreed to pay to JH Kelly the reasonable value of such labor, services,
22 and materials.

23 77. The reasonable value of such labor, services, and materials, and related costs, was,
24 and is an amount to be proven at time of trial, but estimated at \$26,000,000, which remains due,
25 owing, and unpaid by the AECOM Defendants, together with interest at the prevailing legal rate
26 from the time such payments became due.

Wherefore, JH Kelly seeks relief as set forth in the Prayer for Relief.

RESERVATION OF RIGHTS

1 28. JH Kelly hereby expressly reserves the right to amend its Complaint and assert
2 additional damages and causes of action, including, but not limited to, causes of action for
3 negligent misrepresentation, fraudulent misrepresentation, fraudulent inducement of contract, and
4 related causes of action, based on facts pled and facts learned through discovery.

PRAYER FOR DAMAGES

7 *On the First, Second, Third, and Fourth Causes of Action (against AECOM and Does 1-10, and*
8 *each of them):*

- 9 1. For principal damages of approximately \$26,402,479.89, plus contractual fees, or
10 an amount to be proven at the time of trial,
11 2. For interest at the contractual rate of 18% per annum, or the prevailing legal rate,
12 whichever is higher;

13 *On the Fifth and Seventh Causes of Action (against AECOM and Does 1-10, and each of them):*

- 14 3. For principal damages in an amount to be proven at the time of trial, but
15 approximately \$26,000,000;
16 4. For interest at the prevailing legal rate;

17 *On the Sixth Cause of Action (against AECOM and Does 1-10, and each of them):*

- 18 5. For principal damages of not less than \$16,402,479.89, or an amount to be proven
19 at the time of trial;
20 6. For interest at the contractual rate of 18% per annum, or the prevailing legal rate,
21 whichever is higher;
22 7. For the statutory penalty of 2% per month pursuant to California Business and
23 Professions Code § 7108.5, and/or other applicable code section(s);
24 8. For attorneys' fees as provided in California Business and Professions Code
25 § 7108.5, and/or other applicable code section(s), or as otherwise provided by
26 law;

27 *Against all defendants on all causes of action:*

- 28 9. For costs of the suit herein incurred; and

-21-

1 10. For such other relief as the Court may deem just and proper.

2 **JURY DEMAND**

3 JH Kelly demands a jury trial.

5 DATED: January 29, 2019

STOEL RIVES LLP

7 By: _____

MARIO R. NICHOLAS
Attorneys for Plaintiff
JH Kelly, LLC

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-22-

COMPLAINT

STOEL RIVES LLP
ATTORNEYS AT LAW
PORTLAND

99802670.8 0034592- 00012

EXHIBIT A

**AECOM Technical Services,
Inc.**

SUBCONTRACT # 60482831-SC-001.....

Client / Prime Contract / Task Order

AECOM Numbers:

Client: PG&E.....
 Prime contract #:2501335149..... / Task Vendor #: TBD.....
 Order #:n/a.....
 Prime contract (task order) pricing structure: lump sum

Subcontractor:

Issued By:

Sub Name: JH Kelly,LLC
 Address: 821 3rd Avenue
 City, State, ZIP Longview, WA 98632

AECOM Technical Services, Inc.
 300 Lakeside Drive, Suite 400.....
 Oakland, CA 94612.....

Attn: Steve Lennon
 Phone: (360) 905-1372
 Fax:...n/a.....

Attn: Ocie Williams....., Subcontract Administrator
 Phone:...(510) 874-3169.....
 E-Mail:ocie.williams@aecom.com
 Fax:....n/a.....

Period of Performance:

Price or Not-To-Exceed Ceiling Payment Terms

Price: \$14,341,281 **NET 30 days**

07/01/2016 through 02/28/2018

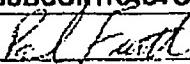
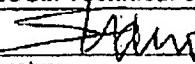
This agreement ("Subcontract") between the parties, when referenced herein shall be deemed to include the documents referenced in the Table of Contents below:

TABLE OF CONTENTS

Signature Form (this page)
 Standard Terms and Conditions [Agreement Between Design-Builder And Subcontractor (Where Subcontractor Does Not Provide Design Services)]
 EXH A Flow Down General Conditions [Attachment 2 GC AECOM 2501335149 01062016 Final fpd3]
 EXH A1 Flow Down Specific Conditions [Attachment 3 SC AECOM 2501335149 01152016 Final fpd3]
 EXH A2 Modified Flow Down Conditions _FINAL_ 2016-10-12
 EXH B Scope of Work [Attachment 1 PSI AECOM 2501335149 01152016 Final fpd3]
 EXH B1 15000.77.505 PGE Burney Station Proposal 10-7-2015
 EXH B2 PG&E Burney pricing workbook JHK 10-7-2015 (POST CONFERENCE CALL) REV1Submission
 EXH B2A Material Quantities
 EXH B3 15000.77.505 PG&E Burney Alt Add for Comp Bldg - Slab Removal REV 1
 EXH B4 Unit Pricing for Boulder Removal
 EXH C1 CA Conditional Waiver And Release On Progress Payment
 EXH C2 CA Unconditional Waiver And Release On Progress Payment
 EXH D1 CA Conditional Waiver And Release On Final Payment
 EXH D2 CA Unconditional Waiver And Release On Final Payment
 EXH E Not Used
 EXH F Performance & Payment Bonds (to be provided by JH Kelly)
 EXH G Not Used
 EXH H JH Kelly Construction Schedule
 EXH I1 JHK Time and Material Rates – Labor
 EXH I2 JHK Time and Material Rates – Equipment
 EXH J JHK Proposed Invoicing Schedule

The effective date of this Subcontract is the date of the last signature below.

Exhibit A
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The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Subcontract and agree to be bound accordingly.	
SUBCONTRACTOR	
	10/21/16 Date
Signature	
Paul Furt	
Printed Name	
CFO VP	
Printed Title	
AECOM Technical Services, INC.	
	10/21/16 Date
Signature	
SHAWN KELLY	
Printed Name	
Vice President	
Printed Title	

Page 2

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AGREEMENT BETWEEN DESIGN-BUILDER AND SUBCONTRACTOR (WHERE SUBCONTRACTOR DOES NOT PROVIDE DESIGN SERVICES)

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AECOM Technical Services, Inc.
300 Lakeside Drive, Suite 400
Oakland, CA 94612

Agreement Between Design-Builder and Subcontractor (Where Subcontractor Does Not Provide Design Services)

This AGREEMENT is made as of the 21st day of October

in the year of 2016, by and between the following parties, for services in connection with the Project identified below:

DESIGN-BUILDER:

(Name and address)
AECOM Technical Services, Inc.
300 Lakeside Drive, Suite 400
Oakland, CA 94612

SUBCONTRACTOR:

(Name and address)
JH Kelly, LLC
821 3rd Avenue
Longview, WA 98632

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)
Burney K2 Replacement Project
37667 Highway 299
Burney, CA 96013

OWNER:

(Name and address)
Pacific Gas and Electric Company
77 Beale Street
San Francisco, California 94105

In consideration of the mutual covenants and obligations contained herein, Design-Builder and Subcontractor (the "Parties") agree as set forth herein.

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Agreement Between Design-Builder and Subcontractor
(Where Subcontractor Does Not Provide Design Services)

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Article 1

General

1.1 Basic Purpose.

1.1.1 Design-Builder has contracted with Owner to provide the services necessary for the design and construction of the Project as set forth in the Engineer, Procure, Construct Agreement ("EPC Agreement"). Subcontractor, through itself, and Sub-Subcontractors, agrees to provide all construction and other aspects of the Work consistent with the Contract Documents. Design-Builder and Subcontractor agree that to the extent applicable to the performance of the Work hereunder, Subcontractor shall have the same responsibilities and obligations as to Design-Builder as Design-Builder by the EPC Agreement has against and to Owner, except as may be modified herein. Subcontractor will include in each lower-tier subcontract the appropriate flow-down clauses as required by the EPC Agreement. Any inconsistency, conflict or ambiguity between terms and conditions of this Agreement and the terms and conditions of the EPC Agreement will be resolved by applying the more stringent of the conflicting provisions.

1.2 Basic Definitions.

1.2.1 Terms used in this Agreement shall have the meanings set forth in the EPC Agreement between Owner and Design-Builder unless otherwise provided herein, with the following specific terms defined as follows:

1.2.1.1 *Agreement* refers to this executed contract between Design-Builder and Subcontractor.

1.2.1.2 *Construction Documents* are the documents consisting of Drawings and Specifications, prepared or assembled by Design-Builder in accordance with the EPC Agreement.

1.2.1.3 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.1.4 *EPC Agreement* refers to the contract between Design-Builder and Owner for the design and construction of the Project and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

1.2.1.5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the EPC Agreement.

1.2.1.6 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to any items identified in the punch list prepared under the EPC Agreement and the submission of all documents set forth in Section 7.5.2.

1.2.1.7 *Force Majeure Events* are those events that are beyond the control of Subcontractor, Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

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Agreement Between Design-Builder and Subcontractor
(Where Subcontractor Does Not Provide Design Services)

Exhibit A
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1.2.1.8 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.1.9 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the parties, the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.1.10 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.1.11 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction, commissioning, substantial completion and completion of the Project that must be attained to satisfy Design-Builder's obligations to Owner.

1.2.1.12 *Site* is the land or premises on which the Project is located. For purposes of the contract "Burney" shall mean the site.

1.2.1.13 *Sub-Subcontractor* is any person or entity retained by Subcontractor as an independent contractor to perform a portion of the Subcontractor's Work and shall include materialmen, suppliers, and subcontractors of any tier which will accept certain flow down provisions from the EPC Agreement to the extent required in this Agreement.

1.2.1.14 *Substantial Completion or Substantially Complete* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and commercially use the Work for its intended purpose.

1.2.1.15 *Work* is comprised of all Subcontractor's construction and other services required by the Contract Documents, including procuring and furnishing all supervision, labor, inspection, testing and start-up support labor, materials, tools, equipment, machinery, transportation, temporary utilities, temporary facilities, 12 X 60' Trailer connected to site facilities for Design Builder including Parking and porch/steps ready for use, including same items of furniture and appliances Subcontractor supplies for its own trailer(s), and all other items and services specified in this Agreement and the other Contract Documents necessary to complete the portion of the Project described in Exhibit B.

1.3 **Contract Documents.**

1.3.1 The Contract Documents are comprised of the following:

1.3.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement;

1.3.1.2 This Agreement, including the following exhibits: (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel);

Exhibit A Flow Down General Conditions [Attachment 2 GC AECOM 2501335149 01062016 Final fpd3]
Exhibit A1 Flow Down Specific Conditions [Attachment 3 SC AECOM 2501335149 01152016 Final fpd3]
Exhibit A2 Modified Flow Down Conditions_FINAL_2016-10-12
Exhibit B: Scope of Work [Attachment 1 PSI AECOM 2501335149 01152016 Final fpd3]
Exhibit B1_15000.77.505 PGE Burney Station Proposal 10-7-2015
Exhibit B2 PG&E Burney pricing workbook JHK 10-7-2015 (POST CONFERENCE CALL)
REV1Submission
EXH B2A Material Quantities
Exhibit B3 15000.77.505 PG&E Burney Alt Add for Comp Bldg - Slab Removal REV 1
Exhibit B4 Unit Pricing for Boulder Removal
Exhibit C1 CA Conditional Waiver And Release On Progress Payment
Exhibit C2 CA Unconditional Waiver And Release On Progress Payment
Exhibit D1 CA Conditional Waiver And Release On Final Payment
Exhibit D2 CA Unconditional Waiver And Release On Final Payment
Exhibit E: Not Used
Exhibit F: Performance & Payment Bonds (to be provided by JH Kelly)
Exhibit G: Not Used
Exhibit H: JH Kelly Construction Schedule
Exhibit I1: JHK Time and Material Rates – Labor
Exhibit I2: JHK Time and Material Rates – Equipment (to be provided by JH Kelly)
Exhibit J: JHK Proposed Invoicing Schedule

1.3.1.3 The Construction Documents; and

1.3.1.4 The EPC Agreement, but only to the extent the EPC Agreement relates to the Work and the terms and conditions under which the Work shall be performed, as mutually agreed and modified by the parties on the attached Exhibit A2.

1.4 Interpretation and Intent.

1.4.1 Design-Builder and Subcontractor, prior to execution of the Agreement, shall carefully review all the Contract Documents for any conflicts or ambiguities. Design-Builder and Subcontractor will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

1.4.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the more stringent provision of this Agreement will apply as it relates to Subcontractor's scope of Work, determined by a standard of good faith and reasonableness.

1.5 Mutual Obligations and Acknowledgments.

1.5.1 Design-Builder and Subcontractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents. Design-Builder and Subcontractor shall perform their respective responsibilities, obligations and services in a timely manner to facilitate the other's timely and efficient performance and so as not to unreasonably delay or interfere with the other's performance of its obligations under the Contract Documents.

1.5.2 Subcontractor acknowledges that it has reviewed the EPC Agreement, and has met with Design-Builder to review, discuss, and familiarize itself with the EPC Agreement, as well as all

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Agreement Between Design-Builder and Subcontractor
(Where Subcontractor Does Not Provide Design Services)

Exhibit A
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documents incorporated therein and attached thereto. Subcontractor will include in each lower-tier subcontract (if any) the appropriate flow-down clauses as required by the EPC Agreement.

1.6 Entire Agreement.

1.6.1 The Contract Documents, as modified and mutually agreed to by the Design-Builder and Subcontractor, all of which are incorporated by reference into this Agreement, and any modifications thereto, are attached to this Agreement, form the entire agreement between Design-Builder and Subcontractor and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 2

Subcontractor's Services and Responsibilities

2.1 General.

2.1.1 Within seven (7) days after execution of this Agreement, Design-Builder and Subcontractor will meet to discuss issues affecting the administration and schedule of the Work, and implement the necessary procedures, including but not limited to those relating to schedule updates, submittals, and payment, to facilitate the ability of the parties to perform their obligations under this Agreement.

2.1.2 Subcontractor's Representative shall be reasonably available to Design-Builder and shall have the necessary expertise and experience required to supervise the Work. Subcontractor's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Subcontractor. Subcontractor shall replace its Representative upon the reasonable request of Design-Builder.

2.1.3 Subcontractor shall only communicate with Owner, Design-Builder's Design Consultant or separate contractors of Design-Builder or Owner through Design-Builder.

2.2 Review of Site and Contract Documents.

2.2.1 Subcontractor represents that it has examined the Site and the Contract Documents prior to executing this Agreement so as to reasonably ascertain the nature of the Work and the various conditions affecting the Work.

2.2.2 Subcontractor shall promptly report to Design-Builder any errors, inconsistencies, omissions, or violations of Legal Requirements that Subcontractor discovers. Subcontractor shall be liable to Design-Builder for any damages resulting from any such errors, inconsistencies, omissions, or violations of Legal Requirements which Subcontractor discovers and fails to report to Design-Builder. Nothing in this Agreement shall be deemed to transfer any design liability from Design-Builder to Subcontractor, unless Subcontractor's scope of Work includes design-assist services or Subcontractor must perform any incidental design in order to satisfy the requirements of this Agreement.

2.2.3 Subcontractor disclaims any and all liability with respect to latent structural, soil and subsurface conditions and pre-existing contamination of the jobsite.

2.3 Construction Services Generally.

2.3.1 Subcontractor shall perform all construction services efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents and the Project Schedule.

2.3.2 At the request of Design-Builder, Subcontractor shall attend meetings with Design-Builder, Owner, and/or separate design professionals or contractors of Design-Builder or Owner to discuss design and/or construction issues regarding the Subcontractor's Work as listed in Exhibit B which may arise during the Project.

2.4 Submittals and Substitutions.

2.4.1 In accordance with the Contract Documents and the Project Schedule, Subcontractor shall submit for Design-Builder's review and approval submittals, including shop drawings,

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Agreement Between Design-Builder and Subcontractor
(Where Subcontractor Does Not Provide Design Services)

Exhibit A

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product data and samples. Design-Builder shall advise Subcontractor on or before the meeting required by Section 2.1.1 hereof of the submittal requirements for the Project. Any variances with the Construction Documents shall be specifically identified in Subcontractor's submittals or included in Exhibit B. Design-Builder's review and approval shall not relieve Subcontractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to Subcontractor's submittals. Subcontractor shall make any necessary revisions to the submittals requested by Design-Builder.

2.4.2 Subcontractor shall not make any substitutions in the Work or procedures or methods specified by Owner, Design-Builder or the Construction Documents for performing the Work unless it first receives written approval for such substitution from Design-Builder.

2.5 Sub-Subcontractors.

2.5.1 Subcontractor shall employ only Sub-Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Subcontractor agrees that each Sub-Subcontractor shall be fully bound to Subcontractor in the same manner as Subcontractor is bound to Design-Builder for all the requirements of the Contract Documents to the extent applicable to the Sub-Subcontractor's scope of Work.

2.5.2 Subcontractor assumes responsibility to Design-Builder for the proper performance of the Work of Sub-Subcontractors and any acts and omissions in connection with such performance. Subcontractor shall coordinate the activities of all Sub-Subcontractors. Nothing in this Agreement is intended or deemed to relieve Subcontractor from responsibility for the work performed by its Sub-Subcontractors, or create any legal or contractual relationship between Owner or Design-Builder and any Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.6 Work of Others.

2.6.1 Subcontractor agrees to reasonably cooperate with, and coordinate its activities so as not to interfere with, those parties performing work at the Site, including Owner's and Design-Builder's separate contractors, so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.6.2 If any part of the Work depends upon other work performed by Design-Builder, or Design-Builder's or Owner's separate contractors, Subcontractor shall, prior to proceeding with that part of the Work, inspect such other work and promptly notify Design-Builder of any discovered discrepancies or defects that would render it unacceptable for the proper performance of the Work. Subcontractor shall not proceed with such part of the Work without further direction from Design-Builder. Design-Builder shall promptly correct or cause to be corrected any such discrepancy or defect in the other work. Any delay in the performance of the Work caused by the Owner, or for which the Owner is responsible, will be resolved by the application of Section 5.4.1. Except to the extent such discrepancies or defects in such other work are latent, Subcontractor shall be liable for appropriate losses or damages incurred due to any discrepancies or defects in such other work not reported to Design-Builder by Subcontractor.

2.7 Site Cleanup.

2.7.1 Subcontractor shall keep the Site reasonably free from debris, trash and construction wastes resulting from the performance of the Work. Upon Substantial Completion of the Work, or a portion of the Work, Subcontractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Inspection.

2.8.1 At all reasonable times, Subcontractor shall provide sufficient facilities for inspection of the Work by Design-Builder at the Site and at all locations where portions of the Work are in progress or various stages of completion. When appropriate portions of the Work are ready for inspection, Subcontractor shall notify Design-Builder.

2.8.2 When Subcontractor considers that the Work, or a portion thereof that Owner or Design-Builder agrees to accept separately, is Substantially Complete, Subcontractor will notify Design-Builder in writing, and Subcontractor and Design-Builder will jointly inspect all of the Work or a portion thereof performed by Subcontractor. After the inspection, Subcontractor will prepare and submit to Design-Builder in writing a comprehensive punch list of items to be completed or corrected prior to Final Completion. Design-Builder will have ten (10) days from receipt of the punch list to accept, reject, or add items to such punch list. Failure to include an item on such punch list does not alter the responsibility of Subcontractor to complete all Work in accordance with the Contract Documents.

2.9 Patents and Copyrights.

2.9.1 Subcontractor shall pay all license fees and royalties due for items, materials, methods, systems or processes applicable to the Work which are subject to copyrights or patent rights and which are selected by Subcontractor.

2.10 Legal Requirements.

2.10.1 Subcontractor shall perform the Work in accordance with all applicable Legal Requirements.

2.10.2 The Contract Price and/or the times for completion of the Work shall be adjusted to compensate Subcontractor for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, but only to the extent Design-Builder receives a corresponding adjustment from Owner.

2.11 Government Approvals and Permits.

2.11.1 Subcontractor shall obtain and pay for the permits, licenses, and government charges included in Exhibit B required for the prosecution of the Work.

2.11.2 Subcontractor shall provide reasonable assistance to Design-Builder in obtaining those permits, inspections, approvals and licenses, if any, that are the responsibility of Owner or Design-Builder and related to the Work.

2.12 Project Safety and Security.

2.12.1 Subcontractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, (iii) the work of others on the Project, and (iv) all other property at the Site or adjacent thereto. Subcontractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

2.12.2 Subcontractor and Sub-Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific and/or Design-Builder-specific safety requirements set forth in the Contract Documents or established for the Project, provided that such Owner-specific and/or Design-Builder-specific requirements do not violate any applicable Legal Requirement.

Page 8

Agreement Between Design-Builder and Subcontractor
(Where Subcontractor Does Not Provide Design Services)

Exhibit A
Page 13 of 41

Subcontractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Design-Builder's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.12.3 Subcontractor shall cooperate with Design-Builder on all security matters and shall promptly comply with any Project security requirements established by Design-Builder. Subcontractor shall at all times conduct all operations under this Agreement in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage, or other means to any property.

2.12.4 Subcontractor shall furnish its employees and its Sub-Subcontractors' employees identification badges, approved by Design-Builder, showing Subcontractor's name and employee number. Each employee shall be required to wear his badge in plain sight at all times whenever he is on the Site. Subcontractor, its Sub-Subcontractors, and their employees shall observe all procedures for admission to the Site required by Design-Builder.

2.12.5 Prior to the start of the Work at the Site, Subcontractor and its Sub-Subcontractors shall submit to Design-Builder a list of all employees to be employed at the Site in connection with the Work under this Agreement. Such list shall include employee's name, and shall be kept current during the course of the Work.

2.13 Warranty.

2.13.1 Subcontractor warrants to Design-Builder that the Work, including all materials and equipment furnished as part of the Work, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner and/or Design-Builder with greater warranty rights than set forth in this Section 2.13 or the Contract Documents. Subcontractor will provide and, if requested, assign to Design-Builder all manufacturers' warranties upon Substantial Completion.

2.14 Correction of Defective Work.

2.14.1 Subcontractor agrees to correct any of the Work that is found not to be in conformance with the Contract Documents, including that part of the Work subject to Section 2.13 hereof, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents. Where defective Work (and damage to other work resulting therefrom) has been corrected or removed and replaced under this Section 2.14.1, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.

2.14.2 Subcontractor shall, within seven (7) days of receipt of written notice from Design-Builder that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work or the Project affected by the nonconforming Work. If Subcontractor fails to commence the necessary steps within such seven (7) day period, Design-Builder, in addition to any other remedies provided under the Contract Documents, may provide Subcontractor with written notice that Design-Builder will commence correction of such nonconforming Work with its own forces. If Design-Builder does perform such corrective Work, Subcontractor shall be responsible for all reasonable costs incurred by Design-Builder in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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2.14.3 The one (1) year period referenced in Section 2.14.1 above applies only to Subcontractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Design-Builder may have regarding Subcontractor's obligations under the Contract Documents.

2.15 Start-Up and Training.

2.15.1 If required as part of Subcontractor's Work, Subcontractor shall be responsible for the start-up, testing, and commissioning of the Work, and shall train Owner's personnel with respect to the operation and maintenance of the Work.

2.16 Hazardous Conditions.

2.16.1 Subcontractor is responsible for Hazardous Conditions introduced to the Site by itself, Sub-Subcontractors or anyone for whose acts they may be liable. Subcontractor must notify Design-Builder immediately upon the discovery of the presence of any Hazardous Conditions on, or the release of Hazardous Conditions from, the Site. Subcontractor will be responsible for the handling, storage, remediation, or disposal of such Hazardous Conditions (including, but not limited to, any conditions resulting from the presence thereof) in compliance with all applicable Legal Requirements and as directed by Design-Builder.

2.16.2 Subcontractor shall indemnify, defend and hold harmless Owner, Design-Builder, Design Consultants, and their officers, directors, employees and agents from and against all claims, losses, damages, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions for which Subcontractor, Sub-Subcontractors or anyone for whose acts they may be liable are responsible under this Agreement.

2.16.3 Subcontractor and its Sub-Subcontractors will, at their expense, provide suitable facilities to prevent the introduction of any substances or materials into any stream, river, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

2.16.4 Subcontractor and its Sub-Subcontractors will so perform the Work as not to discharge into the atmosphere from any source whatsoever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

2.16.5 Nothing furnished by Subcontractor in the performance of the Work or for incorporation into the Work will contain asbestos (i.e. must be "asbestos-free"). Subcontractor must execute and submit a certificate of conformance with this Section in such form as may be required by Design-Builder.

2.17 Omissions and Misdescriptions

2.17.1 In the event Subcontractor discovers omissions from the drawings or specifications or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Construction Documents, or which are customarily performed, Subcontractor shall immediately bring to the attention of Design-Builder the omission via a Request for Information (RFI) prior to commencement of any work, but shall not relieve the Subcontractor from performing such omitted or misdescribed details of the Work and the Work shall be performed as if fully and correctly set forth and described in the Construction Documents. Variations in quantities from as-bid shall be brought to the attention of Design-Builder via a Request For Information (RFI) prior to any purchase of materials.

2.18 Underground Installations

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2.18.1 Existing underground installations are indicated on the Construction Documents only to the extent such information was discovered by Owner or Design-Builder in preparing the Construction Documents. There is no guarantee as to the accuracy or completeness of such information, and all responsibility for the accuracy and completeness thereof is expressly disclaimed. Subcontractor shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities and by prospecting. Subcontractor's responsibility for locating underground installations is limited to one initial underground verification as noted in Exhibit B. Subcontractor disclaims any and all liability with respect to soil and subsurface conditions, including undocumented or inaccurate location services provided by others.

2.19 Publicity

2.19.1 Subcontractor shall not engage in any advertising, publicity, or other promotional activities which in any way directly or indirectly mentions or refers to this Agreement, the relationship between the parties created thereby or the services and material furnished thereunder, without obtaining the prior written consent of Design-Builder. Subcontractor shall not display any signs, posters, or other advertising matter in or on any part of the Work or around the Site thereof without specific written approval of Design-Builder. The taking of photographs, videotapes, or other visual images of the Site will not be permitted without the prior written approval of Design-Builder.

2.20 Labor Requirements

2.20.1 All employee taxes, wages, and employer contributions imposed by any Union Affiliations, Federal or State laws shall be paid by Subcontractor or its Sub-subcontractors, including all interest and penalties payable under said laws as a result of any noncompliance therewith. Subcontractor shall also indemnify, defend and hold harmless Design-Builder from and against any and all claims, liabilities, and expenses with respect to the foregoing.

Article 3

Design-Builder's Services and Responsibilities

3.1 Timely Reviews and Approvals.

3.1.1 Design-Builder shall provide timely reviews and approvals of all submittals within ten (10) Working Days (consistent with the turnaround times set forth in the Project Schedule), or as agreed to by the parties at the meeting required under Section 2.1.1 hereof.

3.2 Design-Builder's Representative.

3.2.1 Design-Builder's Representative shall be responsible for providing Design-Builder-supplied information and approvals in a timely manner to permit Subcontractor to fulfill its obligations under the Contract Documents.

3.3 Furnishing of Services and Information.

3.3.1 Unless expressly stated to the contrary in the Contract Documents, and to the extent Design-Builder has received such items from Owner, Design-Builder shall provide for Subcontractor's information the items listed below. Design-Builder does not warrant the accuracy

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or completeness of such items provided, however, that Subcontractor is entitled to rely on these items to the same extent Design-Builder is entitled to rely upon such items in the EPC Agreement:

- 3.3.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines (underground and above ground);
- 3.3.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- 3.3.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Subcontractor to perform the Work;
- 3.3.1.4 A legal description of the Site;
- 3.3.1.5 Record drawings of any existing structures at the Site;
- 3.3.1.6 Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- 3.3.1.7 Owner's Project Criteria;
- 3.3.1.8 All permits, approvals, and licenses, if any, set forth in the Owner's Permit List attached as an exhibit to the EPC Agreement; and
- 3.3.1.9 Review and submittal of Test and inspection reports as required in Exhibit B.

3.3.2 Design-Builder shall provide Subcontractor with a copy of the EPC Agreement, including all exhibits, attachments, and other Contract Documents enumerated and incorporated therein. Such copy may be redacted to preserve business confidential information or any other information that Design-Builder deems proprietary.

3.3.3 Intentionally omitted.

3.3.4 Design-Builder shall provide Subcontractor with the Project Schedule and appropriate updates thereto.

3.4 Notification of Errors.

3.4.1 Design-Builder shall notify Subcontractor of any errors, inconsistencies, or omissions Design-Builder discovers in the Work. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall relieve Subcontractor of responsibility for errors, inconsistencies, or omissions in the Work.

3.5 Attendance at Design Meetings.

3.5.1 Design-Builder shall afford Subcontractor and its Sub-Subcontractors the opportunity to attend all necessary design meetings with Owner, Design-Builder's Design Consultant or others furnishing portions of the design for the Project.

3.6 Review and Approval of Submittals.

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3.6.1 Design-Builder shall review and approve submittals, including shop drawings, product data and samples, within fourteen (14) Days after being submitted by Subcontractor. Design-Builder's review and approval of submittals shall be only for the purpose of confirming general conformance with the Construction Documents. Design-Builder's review and approval shall not relieve Subcontractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to Subcontractor's submittals. If revisions are necessary to a submittal prior to Design-Builder's approval, Design-Builder shall inform Subcontractor of any such necessary revisions.

3.7 Design-Builder's Separate Contractors.

3.7.1 Design-Builder is responsible for all work performed on the Project or at the Site by its separate subcontractors under Design-Builder's control. Design-Builder shall contractually require its separate subcontractors to cooperate with, and coordinate their activities so as not to unreasonably interfere with, Subcontractor's ability to timely complete its Work consistent with the Contract Documents.

3.7.2 Design-Builder, Owner, other contractors and other subcontractors may be working at the Site during the performance of this Agreement and Subcontractor Work or use of certain facilities may be interfered with as a result of such concurrent activities. Design-Builder reserves the right to require Subcontractor to schedule the order of performance of the Work in such a manner as will minimize interference with work of any of the parties involved.

3.7.3 Subcontractor shall cooperate with Design-Builder and other consultants, contractors, and subcontractors working at the Site, and shall coordinate its Work with the others and shall not delay or hinder in any way the progress of the Work as a whole. Subcontractor shall not commit any act that will interfere with the performance of work by any other consultant, contractor, and subcontractor or by Design-Builder or Owner.

Article 4

Ownership of Work Product

4.1 Work Product.

4.1.1 The Subcontractor shall have no ownership and property rights in any drawings, specifications, and other documents and electronic data ("Work Product") furnished by Design-Builder to Subcontractor under this Agreement. Design-Builder shall be granted ownership of all Work Product, if any, furnished by Subcontractor to Design-Builder under this Agreement.

4.2 Indemnification for Use of Work Product.

4.2.1 If either Design-Builder or Subcontractor uses the Work Product furnished to them by the other on any other project, it agrees that it shall do so at its sole risk and without liability or legal exposure to the other party, Owner, or anyone working through them. Such party further agrees that it shall defend, indemnify and hold harmless the other party from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from such use of the Work Product on another project.

Article 5

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Time of Performance**5.1 Date of Commencement.**

5.1.1 The Work shall commence five (5) days after Subcontractor's receipt of Design-Builder's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Time of Completion.

5.2.1 Subcontractor shall diligently and continuously prosecute and complete the Work in accordance with the Project Schedule as it may be revised and issued from time to time during the performance of the Work, and any other scheduling requirements listed in the Contract Documents.

5.2.2 Subcontractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Work. Subcontractor shall provide Design-Builder information for the scheduling of the times and sequence of operations required for the Work to meet Design-Builder's overall schedule requirements, shall continuously monitor the Project Schedule, including any revisions thereto, so as to be fully familiar with the timing, phasing and sequence of operation of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the Project Schedule including any revisions thereto. Any Owner or Design-Builder directed changes to the scheduling of times, compression, or sequence of operations required for the Work that impact the Subcontractor's cost of performing the Work, including extended general conditions, will be considered a change to the Work and subject to the provisions of Article 12.

5.2.3 Subcontractor shall timely perform the various stages of the Work so that Design-Builder can achieve the dates set forth in the Project Schedule, including any revisions thereto.

5.3 Time is of the Essence.

5.3.1 Design-Builder and Subcontractor mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents and the Project Schedule.

5.4 Delays to the Work.

5.4.1 **Owner-Caused Delays.** If Subcontractor is delayed in the performance of the Work due to the acts or omissions of the Owner, or for which Owner is responsible, and Subcontractor demonstrates such delay through a critical path analysis or other such proof that Design-Builder and/or Owner may reasonably require, then Subcontractor's time for performance shall be reasonably extended by Change Order, provided that a corresponding adjustment to Design-Builder's time for performance is made by the Owner under the EPC Agreement. In addition, Subcontractor will also be entitled to an appropriate adjustment of the Contract Price under this Section 5.4.1, provided a corresponding adjustment to Design-Builder's compensation is made by the Owner under the EPC Agreement. Notwithstanding any other provision to the contrary, any disputes between Design-Builder and Subcontractor involving delay and resulting damages that arise out of, or relate to, the acts or omissions by Owner or for which Owner is responsible shall be resolved pursuant to Section 13.3 hereof. Subcontractor's recovery shall be limited to the amount, if any, which Design-Builder, on behalf of Subcontractor, actually receives from Owner on account of such claim. Payment by Owner shall be by an express condition precedent to Design-Builder's duty of payment to Subcontractor.

5.4.2 **Force Majeure Events, Hazardous Conditions, & Differing Site Conditions.** If Subcontractor is delayed in the performance of the Work due to Differing Site Conditions (as

defined in FAR 52.236-2), Hazardous Conditions (other than those for which Subcontractor is responsible under Section 2.16 hereof), or Force Majeure Events, and due to no fault of its own or those for whom Subcontractor is responsible, and Subcontractor demonstrates such delay through a critical path analysis or other such proof that Design-Builder and/or Owner may reasonably require, then Subcontractor's time for performance will be reasonably extended by Change Order, provided that a corresponding adjustment to Design-Builder's time for performance is made by the Owner under the EPC Agreement. In addition, Subcontractor will also be entitled to an appropriate adjustment of the Contract Price under this Section 5.4.2, provided a corresponding adjustment to Design-Builder's compensation is made by the Owner under the Design-Build Agreement. Notwithstanding any other provision to the contrary, any disputes between Design-Builder and Subcontractor involving delay and resulting damages that arise out of, or relate to, Differing Site Conditions, Hazardous Conditions (other than those for which Subcontractor is responsible under Section 2.16 hereof), or Force Majeure Events shall be resolved pursuant to Section 13.3 hereof.

5.4.3 Design-Builder-Caused Delays. If Subcontractor's Work is delayed solely as a result of acts or omissions of Design-Builder, and Subcontractor demonstrates such delay through a critical path analysis or other such proof that Design-Builder may reasonably require, then Subcontractor's time for performance will be reasonably extended by Change Order and Design-Builder will be liable to Subcontractor for Subcontractor's actual direct damages caused by Design-Builder. Design-Builder's exercise of its rights to authorize acceleration of the Work shall not constitute a delay, disruption or interference with Subcontractor's Work.

5.4.4 Subcontractor-Caused Delays. If the Project is delayed due to the Subcontractor or anyone for whom Subcontractor is responsible, and not due to Design-Builder or Owner, Subcontractor shall compensate and indemnify Design-Builder for all costs and expenses arising from such delay, including any and all costs incurred by the Owner, and/or any liquidated damages or other damages that Owner may assess against Design-Builder which are attributable to Subcontractor or anyone for whom Subcontractor is responsible pursuant with Specific Conditions Section 5.7. In addition, Subcontractor shall, at the direction of Design-Builder and at Subcontractor's own cost and expense, work such overtime and take such other measures as may be necessary to make up for all time lost in the completion of the Work due to such delay.

5.4.5 In no event shall Subcontractor be entitled to any extension of time or any damages for any delays, disruptions or interferences caused by Subcontractor or its Sub-Subcontractors. In the event damages incurred by Design-Builder are caused both by Subcontractor and another entity for whose acts or omissions Subcontractor is not liable, Design-Builder will have the right to reasonably apportion said damages amongst the responsible parties.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Design-Builder shall pay Subcontractor in accordance with Article 6 hereof the sum of Fourteen Million Three Hundred Forty One Thousand Two Hundred Eighty One and 00/100 Dollars (\$14,341,281.00) ("Contract Price"), subject to adjustments made in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. Design-Builder is not responsible for Subcontractor's bidding or estimating mistakes or miscalculation of market conditions.

6.2 Markups for Changes.

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6.2.1 If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 12.6.1.3 or 12.6.1.4 hereof, the following markups shall be allowed on such changes:

6.2.1.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Subcontractor shall receive a Fee of _____ ten percent (____ 10 %) of the additional Costs of the Work incurred for that Change Order.

6.2.1.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only]

No additional reduction to account for Subcontractor's Fee or any other markup.

or

An amount equal to the sum of: (a) ten percent (____ 10 %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Subcontractor's Fee).

Article 7

Procedure for Payment

7.1 Schedule of Values.

7.1.1 Unless required by Design-Builder upon execution of this Agreement, within ten (10) days of execution of the Agreement, Subcontractor shall submit for Design-Builder's review and approval a Schedule of Values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Subcontractor throughout the Work.

7.2 Progress Payments.

7.2.1 Beginning with the first month after the Date of Commencement, Subcontractor shall submit on the twenty-eighth (28th) day of each month for Design-Builder's review and approval, Subcontractor's Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.1 hereof, including Subcontractor's Schedule of Values as approved by Design-Builder. As a prerequisite for any payment, Subcontractor must provide with each progress invoice a completed Conditional/Unconditional Waiver and Release on Progress Payment form, as appropriate (attached as Exhibit C1 and C2) from Subcontractor and its Sub-subcontractors and suppliers that have filed a Preliminary Notice. Design-Builder will submit Subcontractor's proper Application for Payment to Owner with Design-Builder's Application. Each Application for Payment shall also show the amount of all previous payments to Subcontractor and the amount of current retainage, and shall include evidence satisfactory to Design-Builder demonstrating that Subcontractor has paid all persons supplying labor, materials or services in accordance with its contractual obligations to these persons in connection with the Work. "Current retainage" shall be calculated by multiplying the value of the Work completed and qualified for payment by the retainage percentage.

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7.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Design-Builder is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance, and (iii) upon payment, Design-Builder will receive the equipment and materials free and clear of all liens and encumbrances.

7.2.3 The Application for Payment shall constitute Subcontractor's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Subcontractor's receipt of payment, whichever occurs earlier.

7.2.4 Design-Builder shall make payment on Subcontractor's properly submitted and accurate Application for Payment within seven (7) days after Design-Builder's receipt of payment from Owner on account of Subcontractor's monthly Application for Payment, but in each case less the total of payments previously made, and less amounts properly withheld under this Agreement. Payment terms not to exceed 30 days from approved invoice date. Balances outstanding after 45 days shall accrue interest at a rate of 1.5% per month.

7.3 Retainage on Progress Payments.

7.3.1 Design-Builder will retain from each of Subcontractor's Application for Payment _____ five percent (5 %). Unless mutually agreed otherwise between the parties, retainage will be included in Design-Builder's final payment to Subcontractor, provided Design-Builder has received such retained amounts from Owner and the Design-Builder agrees that Subcontractor has met all of its obligations under the Agreement.

7.4 Withholding of Payments.

7.4.1 If Design-Builder determines that Subcontractor is not entitled to all or part of an Application for Payment, it will notify Subcontractor prior to the date payment is due. The notice shall indicate the specific amounts Design-Builder intends to withhold, the reasons for the withholding, and the specific measures Subcontractor must take to rectify Design-Builder's concerns. Design-Builder and Subcontractor will attempt to resolve Design-Builder's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder shall pay Subcontractor the undisputed amount of the Application for Payment, and Subcontractor may pursue its rights under the Contract Documents, including those under Article 13 hereof.

7.4.2 In addition, any amounts otherwise payable under the Agreement may be withheld, in whole or in part, if (i) any claims or backcharges against Subcontractor by Design-Builder or third parties remain unpaid; or (ii) Subcontractor or its insurance company refuse to promptly defend Design-Builder or Owner for any claim that Subcontractor is required to defend and indemnify Design-Builder and/or Owner under this Agreement.

7.4.3 Design-Builder will pay such withheld payments if Subcontractor (i) pays, satisfies, or discharges any claim of Design-Builder, or third party against Subcontractor, arising out of or in any way connected with this Agreement; or (ii) cures all defaults in the performance of the Agreement.

7.5 Final Payment.

7.5.1 Subcontractor shall submit its Final Application for Payment to Design-Builder in accordance with Section 7.5.2 below. Design-Builder shall make payment on Subcontractor's properly submitted and accurate Final Application for Payment within thirty (30) days after

Design-Builder's receipt of final payment from Owner on account of Subcontractor's Final Application for Payment, but in no event later than thirty (30) days from the date of the Certification of Completion for Final Payment, provided also that Subcontractor has satisfied the requirements for final payment set forth in Section 7.5.2 below.

7.5.2 At the time of submission of its Final Application for Payment, Subcontractor shall provide the following information:

7.5.2.1 Subcontractor's Conditional Waiver Upon Final Payment, and Certification of Completion for Final Payment

7.5.2.2 Any other data required by Design-Builder;

7.5.2.3 Consent of Subcontractor's surety, if any, to final payment;

7.5.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents;

7.5.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

7.5.2.6 As-built drawings, if required by the Contract Documents; and

7.5.2.7 Completion of Design-Builder's required closeout procedures including, but not limited to, completion of all punch list items developed as required by Section 2.8.2 of this Agreement.

7.5.3 Subcontractor shall submit its Final Application for Payment promptly upon completion of the Work, but in no event later than sixty (60) days from Final Completion of the Work. Design-Builder will have no responsibility or liability for payment to Subcontractor if Subcontractor fails to submit its final invoice within the sixty (60) day period. The final payment, however, shall not relieve the Subcontractor from any responsibility or obligation under this Agreement (including, without limitation, the warranty and indemnification provisions thereof) or constitute a waiver of any claim by Design-Builder against Subcontractor.

7.6 Pay When Paid.

7.6.1 Intentionally Omitted.

7.7 Intentionally Omitted.

7.8 Advance Payments.

7.8.1 Design-Builder has the right, at its sole option, to advance any payment due Subcontractor under this Agreement.

7.9 Payment Not Acceptance.

7.9.1 No payment to Subcontractor under this Agreement shall be evidence of, or construed to be, acceptance of defective, faulty, improper or non-conforming work.

7.10 Subcontractor's Payment Obligations.

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7.10.1 Subcontractor will pay its Sub-Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Subcontractor has received from Design-Builder on account of their work. Subcontractor will impose similar requirements on its Sub-Subcontractors to pay those parties with whom they have contracted. Subcontractor will indemnify and defend Owner and Design-Builder against any claims for payment and mechanic's liens as set forth in Section 11.3 hereof, providing Design-Builder is not in breach of its contractual obligations to make payment to Subcontractor for its Work.

7.11 Record Keeping and Finance Controls.

7.11.1 With respect to changes in the Work performed on a cost basis by Subcontractor pursuant to the Contract Documents, Subcontractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after final payment of the Work, Design-Builder and Design-Builder's accountants shall be afforded access to and the right to audit from time-to-time, upon reasonable notice, Subcontractor's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the changes in the Work, all of which Subcontractor shall preserve for a period of three (3) years after final payment. Such inspection shall take place at Subcontractor's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Subcontractor and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

7.12 Sub-subcontractors, Suppliers, and Vendors.

7.12.1 Subcontractor must (if requested by Design-Builder) furnish an affidavit showing the names and addresses of all persons or companies who have furnished labor, materials or services for the Work and the amount due or to become due to each such person. If Subcontractor fails to promptly pay its Sub-Subcontractors or vendors for all labor, services, and materials furnished in connection with the performance of the Work, in accordance with its contractual obligations to such parties, Design-Builder may, after five (5) days written notice to Subcontractor, pay the amount of such liabilities directly to such parties or in the form of checks payable jointly to Subcontractor and such person or company and recover the amount from Subcontractor directly, or by the application of any portion of the Contract Price due. Subcontractor will (if requested by Design-Builder), provide affidavits from all persons furnishing labor, materials or services to the effect that they have been paid in full.

7.13 No Diversion of Funds or False Vouchers.

7.13.1 Subcontractor is directed to comply with all statutory provisions which prohibit the wrongful diversion of funds or the submission of false vouchers. Further, if Subcontractor diverts any funds received in payment under this Agreement and does not apply them to their intended purpose or submits false vouchers for payment, in addition to all other remedies, this Agreement shall be subject to termination for cause without any opportunity to cure.

7.14 Invoicing

7.14.1 Invoices shall be submitted only electronically via email in Adobe PDF format to:

- USAPIimaging@aecom.com (AECOM Accounts Payable)
- steven.petto@aecom.com (AECOM Project Manager)
- ocie.williams@aecom.com (AECOM Procurement Manager)

Invoices shall include the following information:

- Oracle Purchase Order Number: *to be determined after award*
- AECOM Project Number: 60482831
- AECOM Task Number: 01.30.030
- Documentation, e.g., an annotated, signed and scanned Schedule of Values, from the AECOM Site Manager (Pat Elliott) attesting that the scheduled work has been completed and that all work covered by the invoice has been satisfactorily completed.

Article 8

Stop Work and Termination

8.1 Design-Builder's Right to Stop Work.

8.1.1 Design-Builder may, without cause and for its convenience, order Subcontractor in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) Days during the duration of the Project.

8.1.2 Subcontractor is entitled to seek an adjustment of the Contract Price and/or times for completion of the Work if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Design-Builder. However, under no circumstances will Subcontractor be entitled to any adjustment if such suspension or stoppage of work is caused by Subcontractor's breach of this Agreement, wrongful acts, or failure to act. Notwithstanding anything to the contrary herein, if Design-Builder's suspension of the Work is the result of Owner's suspension of Design-Builder's work under the EPC Agreement, then Design-Builder shall pay Subcontractor only those amounts Design-Builder actually receives from Owner on account of the Work.

8.2 Design-Builder's Right to Terminate for Convenience.

8.2.1 Upon ten (10) days' written notice to Subcontractor, Design-Builder may, for its convenience and without cause, elect to terminate this Agreement. In such event, Design-Builder shall have the right to use the existing Work Product, including all materials onsite and offsite in Subcontractor's prefabrication facilities, if any, for purposes of completing the Project, and shall pay Subcontractor for the following:

- 8.2.1.1 All Work executed and all unpaid costs or expenses incurred by the Subcontractor in connection with the executed Work; and
- 8.2.1.2 The reasonable costs and expenses attributable to such termination, including amounts due in settlement of terminated contracts with Sub-Subcontractors or suppliers. In no event will Subcontractor be entitled to any compensation for loss of anticipated profits, opportunity costs, unallocated overhead on Work not performed, or other amounts with respect to Work that has not been performed prior to termination.

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8.2.2 If Design-Builder's termination of Subcontractor for convenience is the result of Owner's termination of Design-Builder for convenience under the Design-Build Agreement, then Design-Builder shall pay Subcontractor only those amounts Design-Builder actually receives from Owner on behalf of Subcontractor.

8.3 Design-Builder's Right to Terminate for Cause.

8.3.1 If Subcontractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, its Sub-Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed in accordance with the Project Schedule, as such schedule may be adjusted, or (vi) perform material obligations under the Contract Documents, then Design-Builder shall have the rights, in addition to any other rights and remedies provided in the Contract Documents or by law, set forth in Sections 8.3.2 and 8.3.3 below.

8.3.2 Upon the occurrence of an event set forth in Section 8.3.1 above, Design-Builder may provide written notice to Subcontractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within five (5) days of Subcontractor's receipt of such notice. If Subcontractor fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Subcontractor of such declaration.

8.3.3 Upon declaring the Agreement terminated pursuant to Section 8.2.1 or 8.3.2 above, Design-Builder may enter upon the premises and take possession, for the purpose of completing the Work, of all materials thereon, which have been purchased or provided for the performance of the Work, all of which Subcontractor hereby transfers, assigns and sets over to Design-Builder for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of termination pursuant to Section 8.3.2, Subcontractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. If the Design-Builder incurs any attorneys' fees and expenses in defense of claims arising from Subcontractor's default, subject to the waiver of consequential damages set forth in Section 13.7 hereof, these costs may be deducted from any amounts due to Subcontractor by the Design-Builder.

8.3.4 If Design-Builder improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 8.2 of the Agreement.

8.4 Subcontractor's Right to Stop Work.

8.4.1 If Design-Builder fails to pay any undisputed amounts due Subcontractor under this Agreement, Subcontractor may, in addition to any other rights afforded under the Contract Documents or at law, stop work in accordance with Section 8.4.2. However, to the extent Design-Builder's failure to pay is related to a dispute between the Parties, the dispute will be resolved in accordance with Article 13 and the parties will continue performance in accordance with Section 13.6 during the pendency of such dispute.

8.4.2 Subcontractor shall provide Design-Builder with written notice that Subcontractor will stop work unless said failure to pay the undisputed amount is cured within seven (7) Days from Design-Builder's receipt of Subcontractor's notice. If Design-Builder does not cure the problem within such seven (7) day period, Subcontractor may stop work. In such case, Subcontractor shall be entitled to make a claim for adjustment to the Contract Price and the times for completion of the Work to the extent it has been adversely impacted by such stoppage.

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